

Beth A. Wilkinson (*pro hac vice*)  
Rakesh N. Kilaru (*pro hac vice*)  
Kieran Gostin (*pro hac vice*)  
Grace Hill (*pro hac vice*)  
James Rosenthal (*pro hac vice*)  
Anastasia M. Pastan (*pro hac vice*)  
Sarah Neuman (*pro hac vice*)  
WILKINSON STEKLOFF LLP  
2001 M Street NW, 10th Floor  
Washington, DC 20036  
Telephone: (202) 847-4000  
Facsimile: (202) 847-4005  
bwilkinson@wilkinsonstekloff.com  
rkilaru@wilkinsonstekloff.com  
kgostin@wilkinsonstekloff.com  
ghill@wilkinsonstekloff.com  
jrosenthal@wilkinsonstekloff.com  
apastan@wilkinsonstekloff.com  
sneuman@wilkinsonstekloff.com

Bambo Obaro  
WEIL, GOTSHAL AND MANGES  
201 Redwood Shores Parkway  
Redwood Shores, CA 94065  
Telephone: (650) 802-3083  
[bambo.obaro@weil.com](mailto:bambo.obaro@weil.com)

*Counsel for Microsoft Corporation*

[Additional Counsel Identified on Signature Page]

**UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA  
SAN FRANCISCO DIVISION**

FEDERAL TRADE COMMISSION,

Case No. 3:23-cv-02880-JSC

Plaintiff,

**ADMINISTRATIVE MOTION TO SEAL  
PORTIONS OF DECLARATION OF AMY  
HOOD**

MICROSOFT CORPORATION and  
ACTIVISION BLIZZARD, INC.

Dept.: Courtroom 8—19th Floor  
Judge: Honorable Jacqueline S. Corley

## Defendants

1 Pursuant to Civil Local Rules 7-11 and 79-5(c), Defendant Microsoft Corporation (“Microsoft”)  
 2 respectfully moves this Court for an order sealing portions of the Declaration of Amy Hood (hereafter,  
 3 “Hood Declaration”).

4 Below, Microsoft has identified highly confidential material found in the deposition excerpts,  
 5 along with the specific bases for sealing required under Local Rule 79-5. The proposed sealing reflects  
 6 Microsoft’s good-faith efforts to narrowly seek sealing of only that information which is competitively  
 7 sensitive, the public disclosure of which would cause injury to Microsoft that cannot be avoided through  
 8 any more restrictive alternative means:

9 <b>Document</b>	10 <b>Portions to Be</b> 11 <b>Filed Under</b> 12 <b>Seal</b>	13 <b>Designating Party</b>	14 <b>Basis for Sealing Request<sup>1</sup></b>
15 Hood Declaration	16 Page 3, portion 17 of footnote 3	18 Microsoft	19 This portion contains non-public and 20 highly sensitive information including, 21 but not limited to, internal decision- 22 making processes, investment decisions, 23 and revenue figures and projections, 24 which could be used to injure Microsoft 25 if made publicly available.
26 Hood Declaration	27 Page 4, portion 28 of paragraph 9	29 Microsoft	30 This portion contains non-public and 31 highly sensitive information including, 32 but not limited to, internal revenue 33 figures and projections, which could be 34 used to injure Microsoft if made publicly 35 available.
36 Hood Declaration	37 Page 4, portion 38 of footnote 4	39 Microsoft	40 This portion contains non-public and 41 highly sensitive information including, 42 but not limited to, internal decision- 43 making processes, investment decisions, 44 assessment of the competitive landscape, 45 and internal discussions of business 46 strategy, which could be used to injure 47 Microsoft if made publicly available.

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<sup>1</sup> Legitimate private interests warrant sealing of the Microsoft information in this chart, and the  
 unsealing of the information would result in injury to Microsoft that cannot be avoided through any  
 less restrictive alternatives.

1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25	Document	Portions to Be Filed Under Seal	Designating Party	Basis for Sealing Request <sup>1</sup>
Hood Declaration	Page 4, portion of footnote 5	Microsoft	This portion contains non-public and highly sensitive information including, but not limited to, internal decision-making processes, investment decisions, and internal discussions of business strategy, which could be used to injure Microsoft if made publicly available.	
Hood Declaration	Page 5, portion of paragraph 11	Microsoft	This portion contains non-public and highly sensitive information including, but not limited to, internal revenue figures and projections, which could be used to injure Microsoft if made publicly available.	
Hood Declaration	Page 6, portion of paragraph 14	Microsoft	This portion contains non-public and highly sensitive information including, but not limited to, internal decision-making processes, investment decisions, and revenue figures and projections, which could be used to injure Microsoft if made publicly available.	
Hood Declaration	Page 7, portion of paragraph 17	Microsoft	This portion contains non-public and highly sensitive information including, but not limited to, internal revenue figures and projections, which could be used to injure Microsoft if made publicly available.	
Hood Declaration	Page 8, portion of footnote 17	Microsoft	This portion contains non-public and highly sensitive information including, but not limited to, internal decision-making processes, investment decisions, and revenue figures and projections, which could be used to injure Microsoft if made publicly available.	

## ARGUMENT

### I. Sealing Portions of the Hood Declaration Is Warranted Under Ninth Circuit Precedent as It Contains Microsoft's Confidential Business Information

1       In the Ninth Circuit, “[p]arties seeking to seal judicial records relating to motions that are ‘more  
 2 than tangentially related to the underlying cause of action,’ bear the burden of overcoming the  
 3 presumption with ‘compelling reasons supported by specific factual findings that outweigh the general  
 4 history of access and the public policies favoring disclosure.’” *Lenovo (United States) Inc. v. IPCom*  
 5 *GmbH & Co., KG*, 2022 WL 2313948, at \*1 (N.D. Cal. Jun. 28, 2022); *see also Kamakana v. City &*

6 *County of Honolulu*, 447 F.3d 1172, 1179 (9th Cir. 2006) (“[T]he court must ‘conscientiously [] balance  
 7 the competing interests’ of the public and the party who seeks to keep certain judicial records secret.”).  
 8 Courts in this Circuit regularly find that sealing is warranted where the records or information that are  
 9 sought to be sealed could be used “as sources of business information that might harm a litigant’s  
 10 competitive standing.” *Nixon v. Warner Commc’ns, Inc.*, 435 U.S. 589, 598 (1978); *see also In re Elec.*  
 11 *Arts, Inc.*, 298 F. App’x 568, 569 (9th Cir. 2008) (same); *Velasco v. Chrysler Grp. LLC*, 2017 WL  
 12 445241, at \*2 (C.D. Cal. Jan. 30, 2017) (stating that “district courts in this Circuit have sealed records  
 13 containing ‘information about proprietary business operations, a company’s business mode or  
 14 agreements with clients,’ [and] ‘internal policies and strategies’”) (internal citations omitted).

15       “The Ninth Circuit has explained that ‘in general, compelling reasons sufficient to outweigh the  
 16 public’s interest in disclosure and justify sealing court records exist when such court files might have  
 17 become a vehicle for improper purposes, such as the use of records to . . . release trade secrets.’” *Velasco*,  
 18 2017 WL 445241, at \*2 (quoting *Elec. Arts*, 298 F. App’x at 569); *see also Elec. Arts*, 298 F. App’x at  
 19 569 (“A ‘trade secret may consist of any formula, pattern, device or compilation of information which  
 20 is used in one’s business, and which gives him an opportunity to obtain an advantage over competitors  
 21 who do not know or use it.’”) (citation omitted). A court has “broad latitude” to grant protective orders  
 22 to prevent disclosure of “many types of information, including, but not limited to, trade secrets or other  
 23 confidential research, development, or commercial information.” *Phillips ex rel. Estates of Byrd v. Gen.*  
 24 *Motors Corp.*, 307 F.3d 1206, 1211 (9th Cir. 2002).

25       In determining whether a document should be filed under seal, courts consider, among other  
 26 things, the measures taken to guard the information’s secrecy and the value of the information to the  
 27 business or its competitors. *E.g., Phillips ex rel. Estates of Byrd v. Gen. Motors Corp.*, 307 F.3d 1206,  
 28 1212 (9th Cir. 2002). Here, Microsoft seeks to seal narrowly tailored excerpts of the Hood Declaration

1 that reference and reflect, among other things, confidential, proprietary information relating to  
 2 Microsoft's internal decision-making processes, investment decisions, strategic evaluation of forward-  
 3 looking opportunities, market share analyses, assessments of the competitive landscape, business  
 4 partnerships, terms of existing confidential agreements, revenue figures and projections, and internal  
 5 presentations discussing business strategy. The disclosure of this information could be used to injure  
 6 Microsoft if made publicly available.

7 **II. Sealing Portions of the Hood Declaration Is Necessary to Protect Microsoft's Confidential  
 8 and Proprietary Business Information**

9 Microsoft seeks to maintain under seal portions of the Hood Declaration, as they contain  
 10 Microsoft's non-public and highly sensitive information from documents obtained during the course of  
 11 the FTC's investigation and during litigation discovery. Examples of such confidential information  
 12 include, but are not limited to, Microsoft's internal decision-making processes, investment decisions,  
 13 strategic evaluation of forward-looking opportunities, market share analyses, assessments of the  
 14 competitive landscape, business partnerships, terms of existing confidential agreements, revenue figures  
 15 and projections, and internal presentations discussing business strategy. Disclosure of this information  
 16 would provide Microsoft's competitors with private data about Microsoft's performance and business  
 17 strategy, which could harm Microsoft's competitive standing. *See Cont'l Auto. Sys. v. Avanci, LLC*,  
 18 2019 WL 6612012, at \*4 (N.D. Cal. Dec. 5, 2019). Thus, the unsealing of this highly confidential and  
 19 sensitive information would cause injury to Microsoft that cannot be avoided through less restrictive  
 20 alternatives.

21 Finally, Microsoft provided the FTC with the confidential business information cited in the Hood  
 22 Declaration pursuant to the statutory and regulatory guarantees of confidentiality contained in the Hart-  
 23 Scott-Rodino Act or the FTC Act. *See* 15 U.S.C. §§ 18a(h), 46(f), 57b-2(b), 57b-2(c); 6 C.F.R. § 4.10(d)-  
 24 (g). In similar cases, the FTC has acknowledged the need to maintain the confidentiality of a party's  
 25 confidential business information that has been provided to the FTC via a regulatory request. *See, e.g.*,  
 26 *FTC v. Lockheed Martin Corp.*, 2022 WL 1446650, at \*2 (D.D.C. Jan. 25, 2022) ("According to the  
 27 FTC, sealing the complaint is appropriate . . . because the filing includes confidential information  
 28 submitted . . . pursuant to 'statutory and regulatory guarantees of confidentiality.' . . . The requested

1 sealing covers only confidential information and is, according to the FTC, required by regulation.”).

2 **III. Conclusion**

3 As stated above, compelling reasons justify Microsoft’s request for sealing the confidential  
 4 business information contained in the Hood Declaration. Microsoft respectfully requests that this Court  
 5 grant its Motion to Seal the confidential portions of the Hood Declaration as identified herein. In  
 6 accordance with Civil Local Rule 7-11, Microsoft has also filed a Proposed Order herewith.

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 8 Dated: June 28, 2023

Respectfully submitted,

9  
 10 By: /s/ Caroline Van Ness  
 11 Caroline Van Ness (SBN 281675)  
**SKADDEN, ARPS, SLATE, MEAGHER &**  
**FLOM LLP**  
 12 525 University Avenue  
 Palo Alto, California 94301  
 Telephone: (650) 470-4500  
 Facsimile: (213) 621-5430  
 caroline.vanness@skadden.com

13  
 14 Steven C. Sunshine (*pro hac vice*)  
 Julia K. York (*pro hac vice*)  
**SKADDEN, ARPS, SLATE, MEAGHER &**  
**FLOM LLP**  
 15 1440 New York Avenue, N.W.  
 Washington, DC 20005-2111  
 Telephone: (202) 371-7000  
 Facsimile: (202) 393-5760  
 steven.sunshine@skadden.com  
 julia.york@skadden.com

16  
 17 Michael J. Sheerin (*pro hac vice*)  
 Evan R. Kreiner (*pro hac vice*)  
**SKADDEN, ARPS, SLATE, MEAGHER &**  
**FLOM LLP**  
 18 1 Manhattan West  
 New York, NY 10001  
 Telephone: (212) 735-3000  
 Fax: (212) 735-2000  
 michael.sheerin@skadden.com  
 evan.kreiner@skadden.com

19  
 20 *Counsel for Defendant Activision Blizzard, Inc.*

21 By: /s/ Beth Wilkinson  
 22 Beth Wilkinson (*pro hac vice*)  
 Rakesh N. Kilaru (*pro hac vice*)  
 Kieran Gostin (*pro hac vice*)  
 Grace Hill (*pro hac vice*)  
 James Rosenthal (*pro hac vice*)  
 Anastasia M. Pastan (*pro hac vice*)  
 Sarah Neuman (*pro hac vice*)  
 Jenna Pavelec (*pro hac vice*)  
 Alysha Bohanon (*pro hac vice*)  
**WILKINSON STEKLOFF LLP**  
 23 2001 M Street, N.W., 10th Floor  
 Washington, D.C. 20036  
 Telephone: (202) 847-4000  
 Facsimile: (202) 847-4005  
 bwilkinson@wilkinsonstekloff.com  
 rkilaru@wilkinsonstekloff.com  
 kgostin@wilkinsonstekloff.com  
 ghill@wilkinsonstekloff.com  
 jrosenthal@wilkinsonstekloff.com  
 apastan@wilkinsonstekloff.com  
 sneuman@wilkinsonstekloff.com  
 jpavelec@wilkinsonstekloff.com  
 abohanon@wilkinsonstekloff.com

24  
 25 Bambo Obaro (SBN 267683)  
**WEIL, GOTSHAL & MANGES LLP**  
 26 201 Redwood Shores Parkway  
 Redwood Shores, CA 94065  
 Telephone: (650) 802-3083  
 Facsimile: (650) 802-3100  
 bambo.obaro@weil.com

27  
 28 Michael Moiseyev (*pro hac vice*)  
 Megan A. Granger (*pro hac vice*)  
**WEIL, GOTSHAL & MANGES LLP**  
 2001 M Street, NW  
 Suite 600

1 Washington, DC 20036  
2 Telephone: (202) 682-7000  
3 Facsimile: (202) 857-0940  
michael.moiseyev@weil.com  
megan.granger@weil.com

4 *Counsel for Microsoft Corporation*

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